BRARY
SUPREME COURT, U.S.

Vol. I

TRANSCRIPT OF RECORD

(Pages 1 to 330)

Supreme Court of the United States

OCTOBER TERM, 1952

No. 35

EASTERN MOTOR EXPRESS, INC., ET AL.,
APPELLANTS,

vs.

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, ET AL.

No. 36

THE SECRETARY OF AGRICULTURE OF THE UNITED STATES APPELLANT,

vs.

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, ET AL.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA

FILED APRIL 16, 1952

Probable jurisdiction noted May 12, 1952

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[fols. 1-3] [Caption omitted]

[fol. 4] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF INDIANA, INDIANAPOLIS DIVISION

Civil Action No. 2825

EASTERN MOTOR EXPRESS, INC., A.C.E. TRANSPORTATION Company, Inc., The Akron-Chicago Transportation Company, Incorporated, All States Freight, Inc., Chicago Express, Inc., Continental Transportation Lines, Inc., Cooper-Jarrett, Inc., Dixie Ohio Express Co., Interstate Motor Freight System, Kelleher Motor Freight Lines, Inc., Kramer Bros. Freight Lines, Inc., Liberty Motor Freight Lines, Incorporated, Long Transportation Co., Mid-States Freight Lines, Inc., Midwest Freight Forwarding Co., Motor Cargo, Inc., Roadway Express, Inc., Spector Motor Service, Inc., Summit Fast Freight, Inc., Transamerican Freight Lines, Inc., Yankee Lines, Inc., Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants

COMPLAINT AND PETITION FOR INJUNCTION—Filed August 16, 1951

Come now, Eastern Motor Express, Inc.; A.C.E. Transportation Company, Inc.; The Akron-Chicago Transportation Company, Incorporated; All States Freight, Inc.; Chicago Express, Inc.; Continental Transportation Lines, Inc.; Cooper-Jarrett, Inc.; Dixie Ohio Express Co.; Interstate Motor Freight System; Kelleher Motor Freight Lines, Inc.; Kramer Bros. Freight Lines, Inc.; Liberty Motor Freight Lines, Incorporated; Long Transportation Co.; Mid-States Freight Lines, Inc.; Midwest Freight For-
[fol. 5] warding Co.; Motor Cargo, Inc.; Roadway Express, Inc.; Spector Motor Service, Inc.; Summit Fast Freight, Inc.; Transamerican Freight Lines, Inc.; and

Yankee Lines, Inc., plaintiffs and petitioners, and for their cause of action allege and say:

1. Plaintiff Eastern Motor Express, Inc., is a corporation organized and existing under the laws of the State of Indiana, with its principal corporate office and principal place of business at 128 Cherry Street, Terre Haute, Indiana. That said Eastern Motor Express, Inc., is a common carrier by motor vehicle, transporting commodities generally, with the usual exceptions, over regular routes under certificates of public convenience and necessity No. MC-106943, MC-106943, Sub 1, Sub 3, Sub 7, Sub 11, Sub 13, Sub 18, Sub 19, Sub 20, Sub 22, Sub 24, Sub 25, and Sub 26, heretofore issued to it by the Interstate Commerce Commission, providing service to numerous points and places in the States of Illinois, Ohio, Missouri, Michigan, Indiana, Pennsylvania, New York, New Jersey, and Maryland, including the principal points of Chicago, and Joliet, Illinois, Cleveland, Cincinnati and Cambridge, Ohio, Benton Harbor, Michigan, St. Louis, Missouri, Huntington, Fort Wayne, Indianapolis, Terre Haute, and Evansville, Indiana, West Springfield, Harrisburg, Rochester, Pittsburgh, Philadelphia, Easton, Scranton, and Johnstown, Pennsylvania, New York City, New York, Newark and Elizabeth, New Jersey, and Baltimore, Maryland.

2. Plaintiff A.C.E. Transportation Company is a corporation organized and existing under the laws of the State of Ohio, with its principal corporate office and principal place of business at 395 Baird Street, Akron, Ohio. That said A.C.E. Transportation Company, Inc., is a common carrier by motor vehicle, transporting commodities generally, with the usual exceptions, over regular routes under [fol. 6] certificate of public convenience and necessity No. MC-30138, heretofore issued to it by the Interstate Commerce Commission, providing service to numerous points and places in the States of Ohio, New York, Massachusetts, Connecticut, Rhode Island, and New Jersey, including the principal points of Akron, Cleveland, and Canton, Ohio, Boston, and Springfield, Massachusetts, New York City, Schenectady, Troy, and Albany, New York, New Haven, Connecticut, Providence, Rhode Island, and Newark, New Jersey.

3. Plaintiff The Akron-Chicago Transportation Company, Incorporated, is a corporation organized and existing under the laws of the State of Ohio, with its principal corporate office and principal place of business at 347 West Thornton Street, Akron, Ohio. That said The Akron-Chicago Transportation Company, Incorporated, is a common carrier by motor vehicle, transporting commodities generally, with the usual exceptions, over regular routes under certificate of public convenience and necessity No. MC-72444, heretofore issued to it by the Interstate Commerce Commission, providing service to numerous points and places in the State of Illinois, Indiana, Ohio, Pennsylvania, and New York, including the principal points of Chicago, Illinois, Cleveland, Canton, Toledo, Akron, Lima, Cincinnati, and Zanesville, Ohio, Buffalo, Rochester, Syracuse, Ithaca, and Rome, New York, Elkhart and LaPorte, Indiana, New Castle, and Sharon, Pennsylvania.

4. Plaintiff All States Freight, Inc., is a corporation organized and existing under the laws of the State of Ohio, with its principal corporate office and principal place of business at Akron, Ohio. That said All States Freight, Inc., is a common carrier by motor vehicle, transporting commodities generally, with the usual exceptions, over regular routes under certificate of public convenience and necessity [fol. 7] No. MC-59852, and MC-59852, Sub 7, heretofore issued to it by the Interstate Commerce Commission, providing service to numerous points and places in the States of Ohio, Massachusetts, New York, Connecticut, Pennsylvania, Maryland, and Rhode Island, including the principal points of Cleveland, Toledo, Akron, Canton, and Youngstown, Ohio, Boston, Springfield, and Taunton, Massachusetts, Albany, Buffalo, Troy, Syracuse, New York City, Rome, and Rochester, New York, Hartford and Bristol, Connecticut, Pittsburgh, Lancaster, Philadelphia, Erie and Harrisburg, Pennsylvania, Baltimore, Maryland, and Providence, Rhode Island.

5. Plaintiff Chicago Express, Inc., is a corporation organized and existing under the laws of the State of New York, with its principal corporate office and principal place of business at 507 West Street, New York City. That said Chicago Express, Inc., is a common carrier by motor

vehicle, transporting commodities, generally, with the usual exceptions, over regular routes under certificate of public convenience and necessity No. MC-27970, and MC-27970, Sub 2, heretofore issued to it by the Interstate Commerce Commission, providing service to numerous points and places in the States of Illinois, Indiana, Ohio, New Jersey, New York, Massachusetts, Rhode Island, Connecticut, and Pennsylvania, including the principal points of Chicago, Champaign and Mattoon, Illinois, South Bend, Indiana, Toledo, and Cleveland, Ohio, Jersey City, and Newark, New Jersey, Buffalo, Rochester, New York City, and Albany, New York, Boston, Massachusetts, Providence, Rhode Island, Bridgeport, Connecticut, Pittsburgh, and Philadelphia, Pennsylvania.

6. Plaintiff Continental Transportation Lines, Inc., is a corporation organized and existing under the laws of the State of Pennsylvania, with its principal corporate office and principal place of business at 1813 North Franklin Street, Pittsburgh, Pennsylvania. That said Continental [fol. 8] Transportation Lines, Inc., is a common carrier by motor vehicle, transporting commodities generally, with the usual exceptions, over regular routes under certificate of public convenience and necessity No. MC-20207, and MC-20207, Sub 24, heretofore issued to it by the Interstate Commerce Commission, providing service to numerous points and places in the States of Ohio, Pennsylvania, Maryland, New Jersey, and New York, including the principal points of Cincinnati, Columbus, Springfield, Zanesville, East Liverpool, Wooster, Akron, Cleveland, and Dayton, Ohio, Pittsburgh, Harrisburg, Butler, and Philadelphia, Pennsylvania, Baltimore and Hagerstown, Maryland, Trenton, and Newark, New Jersey, and New York City, New York.

7. Plaintiff Cooper-Jarrett, Inc., is a corporation organized and existing under the laws of the State of Missouri, with its principal place of business at 2113 West 73rd Street, Chicago, Illinois. That said Cooper-Jarrett, Inc., is a common carrier by motor vehicle, transporting commodities generally, with the usual exceptions, over regular routes under certificate of public convenience and necessity No. MC-35334, issued to it by the Interstate Com-

merce Commission, providing service to numerous points and places in the States of Nebraska, Iowa, Missouri, Massachusetts, Illinois, Ohio, New York, Rhode Island, Pennsylvania, Delaware, Kansas, and Indiana, including the principal points of Omaha, Nebraska, Sioux City, and Council Bluffs, Iowa, Kansas City, Sedalia, and Clinton, Missouri, Boston, and Springfield, Massachusetts, Chicago, and Springfield, Illinois, Cleveland, Ohio, Albany, Norwich, and Amsterdam, New York, Providence, Rhode Island, Wilkes-Barre, Philadelphia, and Lancaster, Pennsylvania, Wilmington, Delaware, Topeka, Kansas, and Indianapolis, Indiana.

[fol. 9] 8. Plaintiff Dixie Ohio Express Co., is a corporation organized and existing under the laws of the State of Ohio, with its principal corporate office and principal place of business at 237 Fountain Street, Akron, Ohio. That said Dixie Ohio Express Co., is a common carrier by motor vehicle, transporting commodities generally, with the usual exceptions, over regular routes and under certificates of public convenience and necessity Nos. MC-43654, MC-43654, Sub 14, Sub 15, Sub 16, Sub 17, Sub 19, and Sub 23, heretofore issued to it by the Interstate Commerce Commission, providing service to numerous points and places in the States of Ohio, Kentucky, Georgia, Alabama, Tennessee, New York, Pennsylvania, West Virginia, and Virginia, including the principal points of Akron, Cincinnati, Springfield, and Cleveland, Ohio, Louisville, and Lexington, Kentucky, Atlanta, Georgia, Birmingham, Alabama, Nashville, Knoxville, and Chattanooga, Tennessee, Buffalo, New York, Erie, Pennsylvania, Charleston, West Virginia, Bluefield, and Bristol, Virginia.

9. Plaintiff Interstate Motor Freight System, is a corporation organized and existing under the laws of the State of Michigan, with its principal corporate office and principal place of business at 134 Grandville Avenue, S.W., Grand Rapids, Michigan. That said Interstate Motor Freight System, is a common carrier by motor vehicle, transporting commodities generally, with the usual exceptions, over regular routes under certificates of public convenience and necessity No. MC-35628, MC-35628, Sub 1, Sub 2, Sub 4, Sub 5, Sub 6, Sub 13, Sub 17, Sub 18, Sub 75, Sub 77, Sub 86,

Sub 109, Sub 111, Sub 118, Sub 121, Sub 134, Sub 141, Sub 143, Sub 155, Sub 156, Sub 159, Sub 160, Sub 164, and Sub 165, heretofore issued to it by the Interstate Commerce Commission, providing service to numerous points and [fol. 10] places in the States of Ohio, Illinois, Minnesota, Wisconsin, Michigan, Indiana, Kentucky, Virginia, West Virginia, Maryland, Pennsylvania, New York, New Jersey, Iowa, Massachusetts, Delaware, Missouri, and the District of Columbia, including the principal points of Cincinnati, Toledo, Cleveland, Youngstown, Sandusky, Dayton, Findlay, and Warren, Ohio, Chicago, and Peoria, Illinois, Minneapolis, Minnesota, Milwaukee, Madison, and Janesville, Wisconsin, Kalamazoo, Grand Rapids, Cadillac, Jackson, Lansing, Flint, Bay City, Battle Creek, Coldwater, Niles, Detroit, and Saginaw, Michigan, Evansville, Michigan City, New Albany, Columbus, Indianapolis, Kokomo, Peru, South Bend, Fort Wayne, Huntington, Elkhart, and Muncie, Indiana, Louisville, and Owensboro, Kentucky, Wheeling, West Virginia, Baltimore, Maryland, Pittsburgh, Harrisburg, Philadelphia, Erie, Bedford, and Lancaster, Pennsylvania, New York City, Albany, Syracuse, and Elmira, New York, Trenton, Newark, and Paterson, New Jersey, Davenport, Iowa, Newark, Delaware, Boston, and Springfield, Massachusetts, St. Louis, Missouri, and Washington, D. C.

10. Plaintiff Kelleher Motor Freight Lines, Inc., is a corporation organized and existing under the laws of the State of Missouri, with its principal corporate office and principal place of business at 3130 Hall Street, St. Louis, Missouri. That said Kelleher Motor Freight Lines, Inc., is a common carrier by motor vehicle, transporting commodities generally, with the usual exceptions, over regular routes under certificate of public convenience and necessity No. MC-2306, heretofore issued to it by the Interstate Commerce Commission, providing service to numerous points and places in the States of Illinois, New Jersey, New York, Ohio, Wisconsin, Missouri, Louisiana, Kansas, Connecticut, Texas, Mississippi, Oklahoma, Colorado, Tennessee, and [fol. 11] Alabama, including the principal points of Chicago, Illinois, Newark, West Orange, Elizabeth, New Jersey, New York City, New York, Cleveland, Ohio, Mil-

waukee, Wisconsin, Kansas City, Missouri, New Orleans, Louisiana, Kansas City, Kansas, Jersey City, New Jersey, Danbury, and East Haven, Connecticut, Fort Worth, and Houston, Texas, Hattiesburg, and Gulfport, Mississippi, Stillwater, Oklahoma, Pueblo, Colorado, Memphis, Tennessee, and Mobile, Alabama.

11. Plaintiff Kramer Bros. Freight Lines, Inc., is a corporation organized and existing under the laws of the State of Michigan, with its principal corporate office and principal place of business at 4195 Central Avenue, Detroit, Michigan. That said Kramer Bros. Freight Lines, Inc., is a common carrier by motor vehicle, transporting commodities generally, with the usual exceptions, over regular routes under certificate of public convenience and necessity No. MC-3261, heretofore issued to it by the Interstate Commerce Commission, providing service to numerous points and places in the States of Illinois, Ohio, Indiana, Michigan, Maryland, New York, Pennsylvania, New Jersey, and Delaware, including the principal points of Chicago, Illinois, Toledo, Cleveland, Youngstown, Akron, Ashtabula, and Lorain, Ohio, Hammond, Indiana, Saginaw, Detroit, Lansing, Flint, and Pontiac, Michigan, Baltimore, Frederick, Aberdeen, Annapolis, and Silver Springs, Maryland, Buffalo, New York City, Albany, and Springfield, New York, Philadelphia, Pittsburgh, Erie, Rochester, Harrisburg, and Butler, Pennsylvania, Trenton, Atlantic City, Elizabeth, Amboy, Camden, and Orange, New Jersey, Washington, D. C., and Wilmington, Delaware.

12. Plaintiff Liberty Motor Freight Lines, Incorporated, is a corporation organized and existing under the laws of the State of New York, with its principal corporate [fol. 12] office located at 120 Broadway, New York City, New York, and principal place of business located at 1535 Paterson Plank Road, Secaucus, New Jersey. That said Liberty Motor Freight Lines, Incorporated, is a common carrier by motor vehicle, transporting commodities generally, with the usual exceptions, over regular routes under certificates of public convenience and necessity No. MC-222, and MC-222, Sub 2, Sub 3, and Sub 9, heretofore issued to it by the Interstate Commerce Commission, providing service to numerous points and places in the States of

Illinois, Massachusetts, New York, Missouri, Pennsylvania, New Jersey, Ohio, Indiana, Maryland, Kentucky, Connecticut, Delaware, and Michigan, including the principal points of Chicago, Springfield, Peoria, Evanston, and Decatur, Illinois, Boston, Brockton, Charlestown, Fall River, Holyoke, Medford, New Bedford, Springfield, Watertown, and Worcester, Massachusetts, Syracuse, Buffalo, Albany, Schenectady, Rochester, New York City, Binghamton, Jamestown, Utica, Rome, Troy, and Yonkers, New York, St. Louis, Missouri, Philadelphia, Butler, Allentown, Erie, Harrisburg, Pittsburgh, Reading, Wilkes-Barre, Pennsylvania, Jersey City, Newark, New Brunswick, Bayonne, Camden, Elizabeth, Hackensack, Hoboken, and Lyndhurst, New Jersey, Akron, Cambridge, Cincinnati, Cleveland, Columbus, Hamilton, Mansfield, Toledo, Youngstown, and Zanesville, Ohio, Fort Wayne, Elkhart, Indianapolis, Hammond, Seymour, Evansville, Vincennes, East Chicago, Gary, and Lafayette, Indiana, Baltimore, Cumberland, and Hagerstown, Maryland, Louisville, Bellevue, Newport, and Ludlow, Kentucky, New Haven, Hartford, New London, Bridgeport, and Waterbury, Connecticut, Wilmington, Dover, and New Castle, Delaware, Adrien, Detroit, Monroe and Wyandotte, Michigan.

[fol. 13] 13. Plaintiff Long Transportation Company is a corporation organized and existing under the laws of the State of Michigan, with its principal corporate office and place of business located at Detroit, Michigan. That said Long Transportation Company is a common carrier by motor vehicle, transporting commodities generally, with the usual exceptions, over regular routes under certificate of public convenience and necessity No. MC-24379, heretofore issued to it by the Interstate Commerce Commission, providing service to numerous points and places in the States of Illinois, Pennsylvania, Ohio, Indiana, New York, Michigan, and New Jersey, including the principal points of Chicago, Illinois, Pittsburgh, Rochester, and Johnstown, Pennsylvania, Sandusky, Norwalk, Akron, Canton, Massillon, Toledo, Deerfield, Fostoria, Cleveland, and Rossford, Ohio, Elkhart, Ligonier, and Michigan City, Indiana, New York City, New York, Detroit, Lansing,

Coldwater, Port Huron, Bay City, Flint, Jackson, and Ann Arbor, Michigan, Newark, and Jersey City, New Jersey.

14. Plaintiff Mid-States Freight Lines, Inc., is a corporation organized and existing under the laws of the State of Kansas, with its principal corporate office at Topeka, Kansas, and principal place of business located at Chicago, Illinois. That said Mid-States Freight Lines, Inc., is a common carrier by motor vehicle, transporting commodities generally, with the usual exceptions, over regular routes under certificates of public convenience and necessity No. MC-954, heretofore issued to it by the Interstate Commerce Commission, providing service to numerous points and places in the States of Illinois, Ohio, Indiana, Massachusetts, New York, Pennsylvania, Connecticut, Missouri, Kansas, Iowa, and Nebraska, including the principal points of Chicago, Rockford, Freeport, Aurora, Springfield, and Canton, Illinois, Cleveland, Toledo, Sandusky, Cambridge, Dayton, and Findlay, Ohio, [fol. 14] South Bend, Indianapolis, Logansport, Fort Wayne, Huntington, and Hammond, Indiana, Boston, Worcester, and Springfield, Massachusetts, Albany, Buffalo, and Syracuse, New York, Harrisburg, Lancaster, Pittsburgh, Philadelphia, Johnstown, Erie, and Butler, Pennsylvania, New Haven, and Hartford, Connecticut, Kansas City, Missouri, Topeka, Salina, Wichita, Hutchinson, and Kansas City, Kansas, Centerville, Albia, and Council Bluffs, Iowa, and Omaha, Nebraska.

15. Plaintiff Midwest Freight Forwarding Co., is a partnership, composed of Sol De Ceanne and Domenice De Ceanne, with its principal place of business located at 3220 South Wolcott Avenue, Chicago, Illinois. That said Midwest Freight Forwarding Co., is a common carrier by motor vehicle, transporting commodities generally, with the usual exceptions, over irregular routes under certificates of public convenience and necessity No. MC-28008, and MC-28008, Sub 1, heretofore issued to it by the Interstate Commerce Commission, providing service to numerous points and places in the States of Illinois, Indiana, New York, Connecticut, and Massachusetts, including the principal points of Chicago, Melrose Park, and Evanston, Illi-

nois, Hammond, Gary, East Chicago, Indiana Harbor, and Whiting, Indiana, New York City, New York, New Haven, Connecticut, and Boston, Massachusetts.

16. Plaintiff Motor Cargo, Inc., is a corporation organized and existing under the laws of the State of Ohio, with its principal corporate office and principal place of business at 700 Carroll Street, Akron, Ohio. That said Motor Cargo, Inc., is a common carrier by motor vehicle, transporting commodities generally, with the usual exceptions, over regular routes under certificates of public convenience and necessity Nos. MC-74721, MC-74721, Sub 15, Sub 16, Sub 18, [fol. 15] Sub 19, Sub 20, Sub 21, Sub 22, Sub 23, Sub 24, Sub 26, Sub 28, Sub 31, Sub 32, Sub 33, Sub 36, and Sub 37, heretofore issued to it by the Interstate Commerce Commission, providing service to numerous points and places in the States of Ohio, Minnesota, Pennsylvania, Illinois, Wisconsin, Iowa, Indiana, New York, New Jersey, Maryland, and the District of Columbia, including the principal points of Akron, Warren, Youngstown, Cleveland, Toledo, Mansfield, New Haven, Canton, Medina, Lorain, and Springfield, Ohio, Minneapolis-St. Paul, Austin, Mankato, and Rochester, Minnesota, Sharon, Harrisburg, Allentown, Lewistown, Easton, Scranton, Philadelphia, Gettysburg, Reading, Lancaster, Pittsburgh, Rochester, and York, Pennsylvania, Rockford, Chicago, Freeport, Galesburg, Aurora, and Moline, Illinois, Beloit, Madison, Green Bay, Milwaukee, and LaCrosse, Wisconsin, Waterloo, Dubuque, Manchester, Independence, Cedar Rapids, Davenport, Des Moines, Iowa City, and Mason City, Iowa, Valparaiso, Gary, Indianapolis, Fort Wayne, and Huntington, Indiana, New York City, New York, Newark, Trenton, and Camden, New Jersey, Baltimore, Frederick, Hagerstown, Maryland, and Washington, D. C.

17. Plaintiff Roadway Express, Inc., is a corporation organized and existing under the laws of the State of Ohio, with its principal corporate office and principal place of business located at 147 Park Street, Akron, Ohio. That said Roadway Express, Inc., is a common carrier by motor vehicle, transporting commodities generally, with the usual exceptions, over regular routes under certificates of public convenience and necessity No. MC-2202, and MC-2202, Sub

42, Sub 43, Sub 44, Sub 45, Sub 46, Sub 48, Sub 50, Sub 51, Sub 53, Sub 58, Sub 59, Sub 61, Sub 64, and Sub 66, heretofore issued to it by the Interstate Commerce Commission, [fol. 16] providing service to numerous points and places in the States of Ohio, Indiana, Texas, Missouri, New York, Alabama, New Jersey, Georgia, Oklahoma, Pennsylvania, Michigan, Connecticut, Illinois, Kentucky, Kansas, Tennessee, North Carolina, South Carolina, and Maryland, including the principal points of Akron, Findlay, Youngstown, Wooster, Defiance, Columbus, Cleveland, Norwalk, Toledo, Dayton and Cincinnati, Ohio, Indianapolis, Muncie, and Anderson, Indiana, San Antonio, Houston, Dallas and Fort Worth, Texas, St. Louis, Cape Girardeau, Springfield, and Joplin, Missouri, New York City, Gadsden, Birmingham, Montgomery, and Athens, Alabama, Camden, New Jersey, Macon, Griffin, Atlanta, LaGrange, and Savannah, Georgia, Oklahoma City, Tulsa, and Sapulpa, Oklahoma, Pittsburgh, Lewiston, Philadelphia, Harrisburg, and Lancaster, Pennsylvania, Detroit, and Willow Run, Michigan, Stamford, Connecticut, Peoria, Springfield, Chicago, Chenoa, Litchfield, Mattoon, Effingham, Alton, Belleville, and Waukegan, Illinois, Louisville, Kentucky, Newton, Kansas, Memphis, Chattanooga, Nashville, and Knoxville, Tennessee, Asheville, Charlotte, Durham, Greensboro, Mount Airy, Wilmington, and Winston-Salem, North Carolina, Columbia, Greenville, and Charleston, South Carolina, and Baltimore, Maryland.

18. Plaintiff Spector Motor Service, Inc., is a corporation organized and existing under the laws of the State of Missouri, with its principal corporate office located at 905 South 9th Street, St. Louis, Missouri, and its principal place of business located at 600 West 25th Street, Chicago, Illinois. That said Spector Motor Service, Inc., is a common carrier by motor vehicle, transporting commodities generally, with the usual exceptions, over regular routes under certificate of public convenience and necessity No. MC-69116, heretofore issued to it by the Interstate Commerce Commission, providing service to numerous points [fol. 17] and places in the States of Missouri, Illinois, Indiana, Massachusetts, Pennsylvania, New Jersey, New York, Rhode Island, Connecticut, Maryland, Ohio, and the

District of Columbia, including the principal points of St. Louis, Missouri, Quincy, and Chicago, Illinois, Terre Haute, Indianapolis, and Fort Wayne, Indiana, Boston, Springfield, Pittsfield, and Great Barrington, Massachusetts, Harrisburg, Philadelphia, and Pittsburgh, Pennsylvania, Newark, New Jersey, Providence, and Pawtucket, Rhode Island, New York City, Albany, and Hudson, New York, New London, New Haven, and Hartford, Connecticut, Baltimore, Maryland, Norwalk, and Medina, Ohio, and Washington, D. C.

19. Plaintiff Summit Fast Freight, Inc., is a corporation organized and existing under the laws of the State of Ohio, with its principal corporate office and place of business at 1142 Newton Street, Akron, Ohio. That said Summit Fast Freight, Inc., is a common carrier by motor vehicle, transporting commodities generally, with the usual exceptions, over regular routes under certificate of public convenience and necessity No. MC-68715, heretofore issued to it by the Interstate Commerce Commission, providing service to numerous points and places in the States of Illinois, Indiana, Ohio, Pennsylvania, West Virginia, and Missouri, including the principal points of Chicago, Illinois, Cleveland, Youngstown, and Akron, Ohio, Pittsburgh, Pennsylvania, Fort Wayne, and Indianapolis, Indiana, and St. Louis, Missouri.

20. Plaintiff Transamerican Freight Lines, Inc., is a corporation organized and existing under the laws of the State of Delaware, with its principal corporate office at 100 West 10th Street, Wilmington, Delaware, and its principal place of business located at 1700 North Waterman Avenue, Detroit, Michigan. That said Transamerican Freight [fol. 18] Lines, Inc., is a common carrier by motor vehicle, transporting commodities generally, with the usual exceptions, over regular routes under certificates of public convenience and necessity Nos. MC-10761, and MC-10761, Sub 1, Sub 3, Sub 4, Sub 5, Sub 6, Sub 8, Sub 12, Sub 17, Sub 18, Sub 19, Sub 21(a), Sub 21(b), Sub 21(c), Sub 23, Sub 24, and Sub 26, heretofore issued to it by the Interstate Commerce Commission, providing service to numerous points and places in the States of Nebraska, Iowa, Minnesota, Kansas, Missouri, Illinois, Wisconsin, Indiana, Kentucky, Ohio, Michigan, West Virginia, Pennsylvania; New Jersey, Dela-

ware, New York, and Connecticut, including the principal points of Hartford, Connecticut, Buffalo, Rochester, Syracuse, and New York City, New York, Jersey City, New Jersey, Philadelphia, and Pittsburgh, Pennsylvania, Cleveland, Dayton, Cincinnati, Toledo, and Columbus, Ohio, Detroit, Michigan, Fort Wayne, South Bend, and Indianapolis, Indiana, Louisville, Kentucky, Chicago, Illinois, St. Louis, and Kansas City, Missouri, Kansas City, Kansas, Lincoln, Omaha, Nebraska, Sioux City, Iowa, Milwaukee, Wisconsin, and Wilmington, Delaware.

21. Plaintiff Yankee Lines, Inc., is a corporation organized and existing under the laws of the State of Ohio, with its principal corporate office and principal place of business located at Akron, Ohio. That said Yankee Lines, Inc., is a common carrier by motor vehicle, transporting commodities generally, with the usual exceptions, over regular routes under certificate of public convenience and necessity No. MC-68183, heretofore issued to it by the Interstate Commerce Commission, providing service to numerous points and places in the States of Ohio, West Virginia, Maryland, New Jersey, Pennsylvania, Delaware, and the District of Columbia, including the principal points of Akron, Cleveland, Columbus, and Cincinnati, Ohio, Wheel- [fol. 19] ing, and Weirton, West Virginia, Baltimore, Frederick, and Hagerstown, Maryland, Trenton, and Camden, New Jersey, Pittsburgh, Harrisburg, and Philadelphia, Pennsylvania, Dover, and Wilmington, Delaware, and Washington, D. C.

22. This action arises under the Fifth Amendment to the Constitution of the United States, and under the laws of the United States, and more particularly under Sections 205(g) and 205(h) of Part II of the Interstate Commerce Act (U. S. Code, Title 49, Sections 305(g) and 305(h)), and under the Acts of Congress, Code of Law of the United States, Title 28, Sections 1336, 1398, 2284 and Sections 2321 to 2325, inclusive.

Plaintiffs and petitioners sue to enjoin, set aside, annul and restrain the enforcement of a certain order of the Interstate Commerce Commission, approved May 8, 1951, a true copy of which order as served on counsel for plaintiffs and petitioners, marked Appendix "A," is attached to this

petition and complaint and is hereby made a part hereof by reference. Said order complained of was adopted by a divided vote, only *seven* of the *eleven* members of the Commission supporting the order.

Commissioner Lee, Chairman of Division 5 of the Commission, a division composed of three members and assigned to Motor Carrier cases, in a separate opinion set out in Sheets 46 and 47 of Appendix "A" of the complaint, dissented from most of the harsh, drastic, unworkable and unlawful provisions of said order. Commissioner Rogers, also a member of Division 5, and Commissioners Mitchell and Knudson, would not participate in the decision.

23. On January 9, 1948, the Interstate Commerce Commission, Division 5, entered an order in Docket Ex Parte No. MC-43, issuing a notice of proposed rule making involving lease and interchange of vehicle by motor carriers. [fol. 20] The order complained of erroneously states on Sheet 1 thereof that this notice was issued January 8, 1948. A true copy of said order as served on plaintiffs and petitioners is attached hereto and made a part hereof as Appendix "B". Said order of January 9, 1948, included as an appendix thereto, certain proposed rules and regulations, several of which were conflicting and designed to accomplish diametrically opposite results.

24. Thereafter, the defendant Commission issued a notice that public hearing would be held in Washington, D. C., in connection with the investigation instituted by the order of January 9, 1948, before Examiner Evan Brooks, who at that time was not qualified as a hearing Examiner under the Administrative Procedure Act. Immediately prior to the hearing the defendant Commission cancelled the assignment to Examiner Brooks, and named Examiner Henry C. Lawton, an examiner of the defendant Commission, who had been given the title of a hearing examiner under the Administrative Procedure Act, to hear this matter in an effort to show token compliance with some of the provisions of the Administrative Procedure Act. (U. S. Code, Title 5, Section 1001 to 1011, inclusive.)

Hearings were held at Washington, D. C., on October 14, 15, and 18, 1948; at St. Louis, Missouri, on December 6, 7, 8, and 9, 1948; at Washington, D. C., on December 13, 14, 15,

and 16, 1948; at Washington, D. C., on January 10, 11, 12, 13, and 14, 1949; at Washington, D. C., on January 24, 25, 26, and 27, 1949.

The defendant Interstate Commerce Commission permitted its Bureau of Motor Carriers to appear and participate in the hearings as a party, just as if said Bureau was a legal entity separate and distinct from the defendant Commission itself.

[fol. 21] Although the matters under investigation involved motor transportation agencies and virtually all shippers and receivers of freight throughout the United States, the only concession made by the defendant Commission to repeated requests for hearings at strategic and convenient points throughout the nation, was the determination to hold certain sessions at St. Louis, Missouri; otherwise, all hearings were held at Washington, D. C.

Following the hearing briefs were filed by the parties, including briefs on behalf of certain of the plaintiffs, in which the attention of the Commission was directed to the questions of law now raised in this court by this complaint.

25. On August 26, 1949, Examiner Lawton filed a proposed report recommending adoption by the Commission of harsh, drastic, unworkable and unlawful rules and regulations concerning leasing and interchange of vehicles, to which exceptions were filed by numerous parties, including many of the plaintiffs.

26. On June 26, 1950, Division 5 of the Interstate Commerce Commission, the Division which instituted the investigation and the Division particularly charged by the Commission with the administration of provision of the Interstate Commerce Act involving motor carriers, entered an order in the matter reversing and setting aside many important particulars of the proposed report of Examiner Lawton, and especially reversing and setting aside the recommendations of the Examiner, which would have imposed harsh, drastic, unworkable and unlawful rules and regulations upon the plaintiffs and the motor carrier industry of the United States, generally.

Said order of Division 5, dated June 26, 1950, exceeded the powers granted the Interstate Commerce Commission, by law, and included certain burdensome and unlawful

[fol. 22] regulations affecting the motor carrier industry, but did not include the harsh, drastic, unworkable, and unlawful rules and regulations supported by the Bureau of Motor Carriers of the Interstate Commerce Commission, on brief only, supported by other known opponents of the motor carrier industry; adopted by the Examiner in his report, and now included in the order complained of in even more arbitrary, capricious and illegal form than recommended by the Examiner. Said order of Division 5 did not confiscate the property of these plaintiffs, and would not have caused irreparable damage to these plaintiffs and the shipping public.

Following the order of Division 5, dated June 26, 1949, petitions for reconsideration were filed with the defendant Commission by several of the parties seeking to have the defendant Commission impose harsh, drastic, unworkable and unlawful rules and regulations upon these plaintiffs and the motor carrier industry of the United States. The order of Division 5 carried an effective date of September 8, 1950, and upon the filing of the petitions for reconsideration referred to, the Commission postponed indefinitely the effective date of said order of Division 5.

On October 30, 1950, oral argument was held by the defendant Commission on the questions raised by said petitions for reconsideration. Certain of these plaintiffs appeared and participated in said oral argument by counsel, including counsel signing this complaint, protesting against any change in the order of Division 5, and indicating that in spite of the burdensome and unlawful nature of the regulations included in said order, that every effort would be made to comply therewith, because said regulations would not cause irreparable injury to these plaintiffs.

[fol. 23] 27. On May 8, 1951, the defendant Interstate Commerce Commission made the order complained of in this complaint, reversing in most particulars the order of Division 5, said order complained of carrying an effective date of August 1, 1951.

Following the entry of the order of May 8, 1951, these plaintiffs and others affected thereby, petitioned the defendant Commission to grant reconsideration of said order. Due to the fact that the time for filing replies to said peti-

tions for reconsideration filed by these plaintiffs and others, did not expire until July 26, 1951, these plaintiffs, by their counsel, in writing, requested the Interstate Commerce Commission to postpone the effective date of said order from August 1, 1951, at least to October 1, 1951, or November 1, 1951.

On July 20, 1951, the defendant Commission entered an order postponing the effective date of the order of May 8, 1951, from August 1, 1951, to September 1, 1951.

On August 1, 1951, the defendant Interstate Commerce Commission, made an order denying the petitions for reconsideration filed by these plaintiffs and others, a true copy of said order marked Appendix "C," is attached to this petition and complaint, and is hereby made a part hereof by reference.

Although these plaintiffs, by their counsel, asked for at least sixty days time in which to prepare the complaint and to prepare and obtain certification of the voluminous record for submission to this Court, the defendant Commission ordered the harsh, drastic, unworkable and unlawful rules and regulations to become effective on thirty days notice, the period from August 1, 1951, to September 1, 1951, the minimum time permissible by law.

[fol. 24] Commissioner Lee, Chairman of Division 5 of the Commission, in his separate opinion said that if such regulations are to be made, which he opposes, that the effective date should be postponed "for at least a year, to afford authorized carriers, owner operators, private carriers and persons operating under Section 203(b) (6) an opportunity to adjust their practices without disruption of present service". (Appendix "A" of the complaint, Sheet 46.)

With the entry of the order of August 1, 1951, denying said petitions for reconsideration, these plaintiffs have exhausted all administrative remedies open to them, before the defendant Interstate Commerce Commission, as provided by law, and by the rules and regulations of said Commission.

28. The plaintiffs, and each of them, are now and have been for many years last past, both before and after the enactment of the Motor Carrier Act of 1935, now Part II of

the Interstate Commerce Act, engaged in lawful, economical, and beneficial practices involving the lease and interchange of vehicles, all of which will be prohibited in whole or in part by the order complained of, to the irreparable damage of these plaintiffs and to the irreparable damage of the shipping public, thereby jeopardizing the national defense contrary to the National Transportation Policy, thereby creating, by reason of unlawful and discriminatory exemption of motor carrier operations of railroads, undue preference and advantages to said railroads contrary to said National Transportation Policy; and confiscating the property of these plaintiffs in violation of the Constitution of the United States.

The lawful, economical and beneficial practices in connection with the leasing and interchange of vehicles engaged in by the plaintiffs, include:

[fol. 25] a. Lawful and unrestricted operation of vehicles leased to plaintiffs by the owners thereof, for various periods of time set out in the lease arrangement, including long term leases effective for one year or more and short term or so-called "trip leases" for a particular trip between a definite point of origin and a definite point of destination, transporting a specific load of freight.

Some of the plaintiffs use leased vihcles to supplement large fleets of company owned equipment when extraordinary and unusual demands for services are made by shippers at a certain point requiring the use of more equipment than is customarily stationed at said point. Other plaintiffs use leased equipment entirely for a major portion of the transportation performed, having found that in their operations the best and most economical service is furnished the shipping public by extensive use of leased vehicles.

b. Payment of lease rental on such basis as is established by the lease agreement and contract between plaintiffs and the owner of the motor vehicle equipment, including in many instances, the payment of a percentage of the gross revenue earned by the operation of the vehicle while under lease by plaintiffs.

c. Unhampered and unrestricted interchange of vehicles between plaintiffs and other authorized carriers.

29. The effect of the order of the defendant Commission dated May 8, 1951, and the rules and regulations provided for therein, is:

[fol. 26] a. Unlawfully by an arbitrary assumption of power specifically denied to the defendant Commission by the express provisions of the Interstate Commerce Act, Part II (U. S. Code Title 49, Section 308), and without any authority whatsoever to prohibit the plaintiffs from operating vehicles under short term or "trip leases" by reason of provisions of Rule 207.4 (a) (3) (Appendix "A," Sheet 3 of the rules), which requires that all equipment operated by these plaintiffs when under lease, shall be leased for not less than thirty days by an agreement in writing.

b. Unlawfully and without any authority whatsoever to prohibit plaintiffs from paying the lessor rental for any leased equipment on the basis of any division of the earnings thereof by reason of the provisions of Rule 207.4 (a) (5) (Appendix "A," Sheet 3 of the rules).

This rule unlawfully, without any authority whatsoever, would abrogate, annul, and set aside existing contracts between plaintiffs and owners of motor vehicle equipment which provide for the lease of vehicles on a division of revenue basis, which contracts will be in full force and effect when the order complained of and the rule relating to such agreements becomes effective.

c. Unlawfully and without any authority whatsoever to prohibit these plaintiffs from engaging in unhampered and unrestricted interchange of equipment between themselves and other authorized carriers by reason of the provisions of Rule 207.5 (Appendix "A," Sheet 7 of the rules).

30. All of the provisions, requirements and specifications of the purported rules and regulations covering the lease

and interchange of vehicles by motor carriers established [fol. 27] by the order of May 8, 1951, are harsh, drastic, unworkable, and unlawful, are contrary to the express provisions of the Constitution of the United States, and in violation of the specific provisions of the Interstate Commerce Act, Part II (U.S. Code Title 49, Section 308), in that said rules and regulations limit and restrict the right of these plaintiffs, all of which are common carriers, to add to their equipment and facilities.

31. The order complained of (the order of the defendant Commission, dated May 8, 1951) is contrary to, and violates the National Transportation Policy as set out in the Interstate Commerce Act (U.S. Code Title 49, immediately preceding Section 1) in that it prohibits by Rule 207.4 (a) (3) (Appendix "A," Sheet 3 of the rules) vehicles used in the transportation of exempt commodities including the products of the farm, such as livestock, fruits and vegetables and other agricultural products to market places, from trip leasing such vehicles to plaintiffs and other authorized carriers for return movements without which said vehicles must return to their point of origin without lading, thereby hampering and interfering with the delivery of such agricultural products in interstate commerce and creating additional costs in the transportation of such agricultural commodities, all of which must be paid and borne by the ultimate consumers, the people of the United States of America. The defendant Commission, in the order complained of, provided that this ban on use of such vehicles for transportation by authorized carriers on the return movement is not to become effective until six months after the effective date of the rest of the order, but thereafter all such operations must be terminated. (Appendix "A," Sheet 45.)

32. The order of May 8, 1951, is confiscatory and will, beginning September 1, 1951, deprive these plaintiffs, and each of them, of their property without due process of [fol. 28] law, in violation of the provisions of the Constitution of the United States, in that by prohibiting the present lawful and established practices of the plaintiffs in connection with the leasing and interchange of equipment, said order will cause certain of these plaintiffs immediately

to cease a large part of their operations altogether, and others will be forced to curtail present existing and long established lawful operations and services to the shipping public to such an extent that they will no longer be able to operate without a deficit, and will be forced out of business in the immediate future.

These plaintiffs have an investment of approximately $26,000,000.00 in motor vehicle equipment, terminals and other facilities dedicated to the service of the shipping public, as shown by the annual reports for the year 1950, which plaintiffs are required to file and have filed with the defendant Commission.

The carrier operating property of these plaintiffs, and each of them, as shown by said reports is set out in Appendix "D," attached to the complaint and made a part hereof.

The operations of plaintiffs which the order complained of will prohibit in whole or in part, are:

a. Plaintiff Eastern Motor Express, Inc., had gross revenue for the transportation of freight between the points and in the territory which it is authorized to serve, for the year 1950, of $11,338,539.00, and for the first five months of 1951, gross revenue of $5,768,013.00.

This plaintiff operates 54 tractors and 286 trailers which are company owned, and 192 tractors and 170 trailers which are leased under long term lease, and 39 trip leased vehicles per day.

[fol. 29] Of the total gross revenue of this plaintiff, 72% is derived from the operation of leased vehicles.

b. Plaintiff A.C.E. Transportation Company, Inc., had gross revenue for the transportation of freight between the points and in the territory which it is authorized to serve, for the year 1950, of $2,802,485.84, and for the first five months of 1951, gross revenue of $1,499,009.54. This plaintiff operates 53 power units, which are company owned, and 85 leased vehicles under long term lease, and 3 trip leased vehicles per day.

Of the total gross revenue of this plaintiff, 10% is derived from the operation of leased vehicles.

c. Plaintiff The Akron-Chicago Transportation Company, Incorporated, had gross revenue for the transportation of freight between the points and in the terri-

tory which it is authorized to serve, for the year 1950, of $2,699,870.00, and for the first five months of 1951, gross revenue of $1,265,539.00. This plaintiff operates 238 power units, which are company owned, and 68 leased vehicles under long term lease, and three trip leased vehicles per day.

Of the total gross revenue of this plaintiff, 20% is derived from the operation of leased vehicles.

d. Plaintiff, All States Freight, Inc., had gross revenue for the transportation of freight between the points and in the territory which it is authorized to serve, for the year 1950, of $8,086,462.00, and for the first five months of 1951, gross revenue of $4,734,349.61.

This plaintiff operates 230 power units, which are company owned, and 381 leased vehicles under long term lease, and 75 trip leased vehicles per month.

[fol. 30] Of the total gross revenue of this plaintiff, 64% is derived from the operation of leased vehicles.

e. Plaintiff Chicago Express, Inc., had gross revenue for the transportation of freight between the points and in the territory which it is authorized to serve, for the year 1950, of $6,226,314.00, and for the first five months of 1951, gross revenue of $3,887,093.00.

This plaintiff operates 259 semi-trailers and 34 tractors, which are company owned, and 66 complete units (tractors semi-trailers), 184 tractors leased under long term lease, and 948 trip leased vehicles from January 1, to June 30, 1951.

A considerable portion of the revenue of this plaintiff is derived from the transportation of freight by use of leased vehicles.

f. Plaintiff Continental Transportation Lines, Inc., had gross revenue for the transportation of freight between the points and in the territory which it is authorized to serve, for the year 1950, of $7,296,591.00, and for the first five months of 1951, gross revenue of $4,200,415.55.

This plaintiff operates 284 pieces of equipment, consisting of 87 tractors, 165 trailers and 32 straight trucks, which are company owned, and 45 tractors which

are leased under long term lease, and 64 trailers and 64 tractors which are trip leased.

Of the total gross revenue of this plaintiff, 60% is derived from the operation of leased vehicles.

[fol. 31] g. Plaintiff Cooper-Jarrett, Inc., had gross revenue for the transportation of freight between the points and in the territory which it is authorized to serve, for the year 1950, of $5,963,000.00, and for the first five months of 1951, gross revenue of $3,330,000.00.

This plaintiff operates 30 power units, which are company owned, and 150 leased vehicles under long term lease, and 11 trip leased vehicles per day.

Of the total gross revenue of this plaintiff, 95% is derived from the operation of leased vehicles.

h. Plaintiff Dixie Ohio Express Co., had gross revenue for the transportation of freight between the points and in the territory which it is authorized to serve, for the year 1950, of $6,222,986.00, and for the first five months of 1951, gross revenue of $3,085,851.

This plaintiff operates 96 power units, which are company owned, and 213 leased vehicles under long term lease, and 2 trip leased vehicles.

Of the total gross revenue of this plaintiff, 30% is derived for the operation of leased vehicles.

i. Plaintiff Interstate Motor Freight System, had gross revenue for the transportation of freight between the points and in the territory which it is authorized to serve, for the year 1950, of $19,734,000.00, and for the first five months of 1951, gross revenue of $9,974,000.00.

This plaintiff operates no power units, which are company owned, but has 693 leased vehicles under long term lease, and 219 trip leased vehicles.

[fol. 32] Of the total gross revenue of this plaintiff, 100% is derived from the operation of leased vehicles.

j. Plaintiff Kelleher Motor Freight Lines, Inc., had gross revenue for the transportation of freight between the points and in the territory which it is authorized to serve, for the year 1950, of $2,763,000.00, and for the first five months of 1951, gross revenue of $1,556,000.00.

This plaintiff operates 67 trailers and 32 tractors

which are company owned, and 15 pieces of equipment which are trip leased, per day.

Of the total gross revenue of this plaintiff, 65% is derived from the operation of leased vehicles.

k. Plaintiff Kramer Bros. Freight Lines, Inc., had gross revenue for the transportation of freight between the points and in the territory which it is authorized to serve, for the year 1950, of $11,097,000.00, and for the first five months of 1951, gross revenue of $6,560,180.00.

This plaintiff operates 592 vehicles, which are company owned, and 415 leased vehicles, under long term lease, and 11 trip leased vehicles per day.

Of the total gross revenue of this plaintiff, *100%* is derived from the operation of leased vehicles.

l. Plaintiff Liberty Motor Freight Lines, Incorporated, had gross revenue for the transportation of freight between the points and in the territory which it is authorized to serve, for the year 1950, of $3,062,306.00, and for the first five months of 1951, gross revenue of $1,379,922.00.

[fol. 33] This plaintiff operates 8 straight trucks, 19 tractors, and 16 trailers, which is City equipment, 99 pieces of equipment which is leased under long term lease, and 313 trip leased vehicles.

Of the total gross revenue of this plaintiff, 100% is derived from the operation of leased vehicles.

m. Plaintiff Long Transportation Co., had gross revenue for the transportation of freight between the points and in the territory which it is authorized to serve, for the year 1950, of $4,558,598.00, and for the first five months of 1951, gross revenue of $2,651,253.44.

This plaintiff operates no power units which are company owned, but operates 146 leased vehicles under long term lease, and 6 trip leased vehicles per day.

Of the total gross revenue of this plaintiff, 100% is derived from the operation of leased vehicles.

n. Plaintiff Mid-States Freight Lines, Inc., had gross revenue for the transportation of freight between the points and in the territory which it is authorized to serve, for the year 1950, of $12,900,000.00, and for the

first five months of 1951, gross revenue of $5,722,750.00.

This plaintiff operates 110 power units, which are company owned, and 277 leased vehicles, and 60 trip leased vehicles per month.

A considerable portion of the revenue of this plaintiff is derived from the transportation of freight by use of leased vehicles.

o. Plaintiff Midwest Freight Forwarding Co., had gross revenue for the transportation of freight between the points and in the territory which it is authorized to
[fol. 34] serve, for the year 1950, of $1,409,000.00, and for the first six months of 1951, gross revenue of approximately $710,000.00.

A considerable portion of the revenue of this plaintiff is derived from the transportation of freight by use of leased vehicles.

p. Plaintiff Motor Cargo, Inc., had gross revenue for the transportation of freight between the points and in the territory which it is authorized to serve, for the year 1950, of $14,822,070.96, and for the first five months of 1951, gross revenue of $7,481,784.05.

This plaintiff operates 488 power units, which are company owned, and 864 leased vehicles, under long term lease, and 19 trip leased vehicles per day.

Of the total gross revenue of this plaintiff, 90.7% is derived from the operation of leased vehicles.

q. Plaintiff Roadway Express, Inc., had gross revenue for the transportation of freight between the points and in the territory which it is authorized to serve, for the year 1950, of $21,530,330.00, and for the first five months of 1951, gross revenue of $11,855,825.00.

This plaintiff operates 75 straight trucks, 283 tractors and 730 trailers, which are company owned, and 53 straight trucks, 915 tractors and 746 trailers, which are leased, under long term lease, and 75 tractors and 75 trailers which are trip leased.

Of the total gross revenue of this plaintiff, 81% is derived from the operation of leased vehicles.

[fol. 35] r. Plaintiff Spector Motor Service, Inc., had gross revenue for the transportation of freight between the points and in the territory which it is authorized

to serve, for the year 1950, of $10,739,106.00, and for the first five months of 1951, gross revenue of $4,778,-103.00.

This plaintiff operates 63 tractors and 340 trailers, which are company owned, and 298 tractors and 478 trailers, which are leased under long term lease, and seven pieces of equipment which are trip leased per day.

Of the total gross revenue of this plaintiff, 50% is derived from the operation of leased vehicles.

s. Plaintiff Summit Fast Freight, Inc., had gross revenue for the transportation of freight between the points and in the territory which it is authorized to serve, for the year 1950, of $5,765,294.48, and for the first five months of 1951, gross revenue of $3,070,797.06.

This plaintiff operates 19 power units, which are company owned, and 155 leased vehicles under long term lease, and 219 trip leased vehicles.

Of the total gross revenue of this plaintiff, 95.1% is derived from the operation of leased vehicles.

t. Plaintiff Transamerican Freight Lines, Inc., had gross revenue for the transportation of freight between the points and in the territory which it is authorized to serve, for the year 1950, of $11,823,509.88, and for the first five months of 1951, gross revenue of $7,078,013.56.

This plaintiff operates 1187 company owned vehicles, and 98 leased vehicles under long term lease, and 56 trip leased vehicles.

[fol. 36] Of the total gross revenue of this plaintiff, 46% is derived from the operation of leased vehicles.

u. Plaintiff Yankee Lines, Inc., had gross revenue for the transportation of freight between the points and in the territory which it is authorized to serve, for the year 1950, of $2,931,251.03, and for the first five months of 1951, gross revenue of $1,616,833.22.

This plaintiff operates 78 power units, which are company owned, and 77 leased vehicles under long term lease, and 10 trip leased vehicles.

Of the total gross revenue of this plaintiff, 33.2% is derived from the operation of leased vehicles.

These plaintiffs are engaged in lawful and long established businesses, transporting millions of pounds of freight for thousands of receivers and shippers thereof, involving the payment of millions of dollars in freight charges, which will be lost and destroyed in whole or in part should the order complained of become effective.

33. The order complained of is arbitrary, capricious, discriminatory, and unlawful, in that by the reasons of the provisions of Rule 207.3 (Appendix "A," Sheet 2 of the rules) discriminatory and unlawful exemptions from the provisions of the rules and regulations are made, including an exemption in Rule 207.3(b), relieving from the harsh, drastic, unworkable and unlawful rules and regulations established by said order, motor vehicles when operated by railroads or railroad subsidiaries.

34. The order complained of is unlawful and void in its entirety, for the reason that the defendant Commission overlooked and violated the express provisions of the Administrative Procedure Act, in connection with proposed [fol. 37] rule making, and particularly Section 7-C of the Administrative Procedure Act, relating to evidence, and providing that the proponent of a rule or regulation shall have the burden of proof in proceedings had in connection therewith.

The defendant Commission, in the order complained of, attempts to show "token" compliance with the Administrative Procedure Act, by stating that "the Bureau" (Bureau of Motor Carriers) on brief, after the record was closed, took a definite position and advocated the adoption of certain specific rules. (Appendix "A," Sheet 24).

35. The order complained of is unlawful and void in its entirety in that it interferes with and impairs constitutional guarantees in connection with the right of private contract.

36. In order to avoid a multiplicity of suits brought separately by these plaintiffs, and each of them, this action is brought for and on behalf of all of the plaintiffs, and each of them. These plaintiffs, and each of them, were named as respondents by the defendant Commission in its order instituting the investigation which resulted in the order complained of.

These plaintiffs have a community of interest in connec-

tion with the matters complained of in this complaint, by reason of all being common carriers of commodities generally, with the usual exceptions, operating under certificates of public convenience and necessity heretofore granted to them by the defendant Interstate Commerce Commission, and operate in whole or in part in the same, or substantially the same territory, and are affected by the provisions of the order complained of in the same or substantially the same manner.

37. The order complained of is harsh, drastic, unworkable, and unlawful, as to these plaintiffs, all of which are common carriers of commodities generally, with the usual exceptions, for the reason that the rules and regulations [fol. 38] established by said order are designed to apply to, and be complied with by all types of motor carriers operating in the United States, including the plaintiffs and other common carriers of commodities generally, with the usual exceptions, contract carriers of specific commodities, household goods carriers, oil-field haulers, transporters of agricultural and exempt commodities when performing other service, irregular route common carriers, regular route contract carriers, irregular route contract carriers, automobile transport carriers by motor vehicles, automobile transport haulers engaged in driveaway service, tank truck operators, private carriers, and all other types of motor vehicle transportation, save and except motor vehicles when operated by the railroads and their subsidiaries without regard to the fundamental differences in the method of operation of various types of motor carriers.

38. The defendants, the United States of America, and the Interstate Commerce Commission, their law enforcement officers, agents, servants and employees are threatening to, and will inflict upon the petitioners and plaintiffs great penalties, unless the plaintiffs cease their operations in whole or in part involving the lease and interchange of vehicles upon September 1, 1951, the effective date of the order complained of, and unless the said order is restrained or enjoined, the plaintiffs will be compelled to defend a multiplicity of actions seeking to enforce the terms of said order.

39. The plaintiffs, by reason of the provisions of said

order of the defendant Interstate Commerce Commission, dated May 8, 1951, will suffer confiscation of their property, irreparable loss, damage, and injury, if they are compelled to discontinue their operations involving the lease and interchange of vehicles prohibited by the provisions of [fol. 39] said order, and said confiscation of property, irreparable loss, damage, and injury will begin on September 1, 1951, and will continue thereafter unless defendants and their law enforcement officers, agents, servants and employees are enjoined or restrained from taking any steps to enforce the provision of said order, pending the final determination of this cause.

Wherefore, plaintiffs and petitioners Eastern Motor Express, Inc., Z.C.E. Transportation Company, Inc., The Akron-Chicago Transportation Company, Incorporated, All States Freight, Inc., Chicago Express, Inc., Continental Transportation Lines, Inc., Cooper-Jarrett, Inc., Dixie Ohio Express Co., Interstate Motor Freight System, Kelleher Motor Freight Lines, Inc., Kramer Bros. Freight Lines, Inc., Liberty Motor Freight Lines, Incorporated, Spector Motor Service, Inc., Summit Fast Freight, Inc., Transamerican Freight Lines, Inc., and Yankee Lines, Inc., separately and severally pray:

1. That the Court will issue a temporary restraining order restraining the United States of America and the Interstate Commerce Commission and their law enforcement officers, agents, servants and employees, from enforcing the terms of the order of the Interstate Commerce Commission, approved May 8, 1951, marked Exhibit "A," and attached hereto, and from interfering with the operations conducted by plaintiffs for many years last past, both before and after the enactment of the Motor Carrier Act of 1935, now Part II of the Interstate Commerce Act.

2. That the Court, as soon as practicable after the filing of this petition and complaint, shall call to its assistance in the hearing and determination thereof, two other judges, [fol. 40] one of whom shall be a circuit judge.

3. That process issue against the United States of America and the Interstate Commerce Commission, as provided by law.

4. That a temporary or interlocutory injunction be en-

tered herein, restraining, enjoining and suspending until the further order of this Court, the operation, execution, effect, and enforcement of said order of said Interstate Commerce Commission, approved May 8, 1951, marked Exhibit "A," which is attached hereto and made a part hereof, which is to become effective September 1, 1951.

5. That upon its final hearing this Court shall adjudge such order of the Interstate Commerce Commission, to be null and void and set aside, suspend and annul the same and its enforcement, and that the United States of America, and the Interstate Commerce Commission, their law enforcement officers, agents, servants and employees be perpetually restrained and enjoined from taking any steps or instituting or further presenting any proceedings to enforce said order against these plaintiffs.

6. For such other and further relief as petitioners and plaintiffs may be entitled to in the premises, and your petitioners, and plaintiffs will forever pray.

Eastern Motor Express, Inc., by, /s/ David G. Bartram.

/s/ Howell Ellis, 520 Illinois Building, Indianapolis, Indiana; Milton E. Diehl, 1003 Munsey Building, Washington, D. C., Attorneys for Plaintiffs.

[fol. 41] A.C.E. Transportation Company, Inc., The Akron-Chicago Transportation Company, Incorporated, All States Freight, Inc., Chicago Express, Inc., Continental Transportation Lines, Inc., Cooper-Jarrett, Inc., Dixie Ohio Express Co., Interstate Motor Freight System, Kelleher Motor Freight Lines, Inc., Kramer Bros. Freight Lines, Inc., Liberty Motor Freight Lines, Incorporated, Long Transportation Co., Mid-States Freight Lines, Inc., Midwest Freight Forwarding Co., Motor Cargo, Inc., Roadway Express, Inc., Spector Motor Service, Inc., Summit Fast Freight, Inc., Transamerican Freight Lines, Inc., Yankee Lines, Inc., by, /s/ Simon Fisher.

[fols. 42-43] *Duly sworn to by David G. Bartram and Simon Fisher. Jurats omitted in printing.*

[fol. 44] APPENDIX "A" TO COMPLAINT

Interstate Commerce Commission

Ex Parte No. MC-43

Lease and Interchange of Vehicles by Motor Carriers

Decided May 8, 1951

Upon oral argument, rules and regulations to be observed by motor common and contract carriers of property subject to part II of the Interstate Commerce Act, governing the practices of such carriers in the leasing and interchange of motor-vehicle equipment, prescribed. Findings in prior report, 51 M.C.C. 461, modified accordingly.

Additional appearances:

Lewis A. Carroll, Arthur H. Glanz, and *Eugene T. Liipfert* for respondent motor carriers.

Don Cary Smith for Department of Transportation, State of Washington, and *Guyte P. McChord, Jr.,* for Florida Railroad and Public Utilities Commission.

E. L. Brown, Basil Cole, Harold J. Gilmartin, Joseph H. Hays, F. X. Masterson, and *Ed. White* for railroads.

Other appearances same as shown in prior report.

REPORT OF THE COMMISSION ON ORAL ARGUMENT

By the Commission:

In the prior report, 51 M.C.C. 461, division 5 prescribed rules and regulations governing the leasing and interchange of vehicles by carriers transporting property by motor vehicle in interstate or foreign commerce, subject to our jurisdiction. These rules are reproduced in appendix A hereto. Pursuant to petitions on behalf of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, hereinafter called the Teamsters Union, the National Industrial Traffic League, the Class I

railroads, Household Goods Carriers Conference, and other conferences and associations of motor carriers and individual motor carriers, seeking reconsideration and modification of the rules prescribed, we reopened the proceeding for oral argument and the parties have been heard.

The Issues

The investigation was instituted by division 5 on January 8, 1948, by issuing a notice of proposed rule-making, stating that an investigation would be made under specified sections[1] of the Interstate Commerce Act, into the law- [fol. 45] change of vehicles between such carriers, and the fulness of the practices of motor common and contract carriers of property subject to our jurisdiction, generally referred to herein as authorized carriers, respecting the performance by them of transportation with vehicles owned by others, including the use by one such carrier of part of the capacity of a vehicle owned by another, the interlease of vehicles by such carriers, with and without drivers, to private motor carriers and shippers.

Notice of the proposed rule-making was given to the general public by depositing a copy of the notice of January 8, 1948, in the office of the Secretary of the Commission for public inspection, by filing a copy with the Director, Division of the Federal Register, and by serving a copy of the notice together with tentative rules attached thereto, on each authorized carrier in the United States then subject to our jurisdiction.

The investigation, as stated in the order of division 5, instituting it, is to determine (1) whether any or all of the present practices of the authorized carriers with respect to the performance of transportation by the use of vehicles owned by others, the interchange of vehicles, and the leasing of vehicles to private carriers and shippers, should be required to be discontinued because unlawful or contrary to the public interest; and, if any or all of the present practices are to be continued; (2) whether (a) the renting of vehicles by or to authorized carriers, with or

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[1] Sections 202 (a), 204 (a) (1), (2), and (6); 215, 216 (b), (c), and (e), 220 (a) and (d), and 224.

without drivers, should be limited to long-term leases; (b) the use of leased vehicles by such carriers should be limited to a fixed percentage of the number of vehicles to which the using authorized carrier holds title; and (c) the authorized carriers' practices should be regulated by the tentative rules and regulations, or such other rules and regulations as might be found reasonable.

The American Trucking Associations, Inc., hereinafter called A.T.A., its Household Goods, and Contract Carriers Conferences, others of its constituent conferences, the regulatory bodies of Florida, Washington, Wisconsin, Massachusetts, Nebraska, Rhode Island, Ohio, Maine, and Iowa, numerous associations of motor carriers, both common and contract, the railroads, the Railway Express Agency, Inc., numerous individual carriers and shippers, owners and operators of vehicles under lease to carriers, the Teamsters Union, the Bureau of Motor Carriers, hereinafter called the Bureau, and others, participated in the extensive hearings that were held. A voluminous record was compiled, accompanied by numerous exhibits, in which evidence was introduced by proponents of the tentative rules or other similar regulations, tending to indicate evil effects upon the for-hire trucking industry attributable to leasing, and by others, holding opposite views, of the economic benefits and other advantages to the industry resulting from the leasing practices, particularly the trip-leasing of owner-operators and carriers of exempt commodities.

As previously stated, tentative rules were served with the notice of rule-making instituting the proceeding. These rules, compiled by the Bureau, embodied various suggestions of numerous parties and covered all aspects of leasing in great detail. Some of the rules tended to conflict with others. In the proposed report, the examiner recommended certain rules, embracing some of the provisions of the tentative rules, and these proposed rules, or most of them, with various suggested modifications, are supported by the Bureau, the Teamsters Union, A.T.A.'s Contract Carriers Conference, certain of the State regulatory bodies, and a number of the authorized carriers. These proposed rules are set out in appendix B hereto. A.T.A., on behalf of [fol. 46] its constituent carrier conferences, except the

Contract Carriers Conference, Household Goods Carriers Conference, Heavy Haulers Division of the Local Cartage National Conference, and the Oil Field Haulers Conference, proposed rules which are reproduced in appendix C. A.T.A. and the parties which supported its proposed rules at the hearings, although still advocating certain of the provisions therein, now indicate that they are in substantial accord with the rules prescribed by division 5.

This proceeding has arisen because of a practice which antedates the Motor Carrier Act of 1935, now part II of the act, and undoubtedly is more prevalent in the motor-carrier industry than in any other field of transportation, i.e., the use of non-owned vehicles in their operations by those holding authority as carriers. To a great extent the ownership in such cases is vested in individuals who either drive the vehicles or hire others to drive them. These lessors are generally known, and will be referred to herein, as owner-operators. Many of them are engaged in transporting commodities specified in section 203 (b) (6) of the act, and are sometimes described as exempt commodity haulers.

The authorized carriers utilize the vehicles of others under a great variety of arrangements, including informal verbal agreements, made over the telephone, or on the spot, in many instances for a single haul or a round trip, as well as under written agreements applying for definite periods, and meeting the essential requirements of valid bilateral contracts. The single-haul arrangement is generally described as a trip lease. All these arrangements are embraced in the term "leasing," as used herein, including arrangements between authorized carriers. There is considerable leasing between authorized carriers, and by the carriers from concerns engaged entirely in renting and maintaining motor-vehicle equipment. There is little evidence respecting the activities of such lessors.

The term "interchange," as used herein, is generally understood as covering the physical exchange of equipment, usually trailers, between authorized common carriers, at some common point, and generally in the furtherance of a through movement of freight over the lines of such carriers. Completely loaded trailers may be exchanged, or a loaded trailer may be tendered by one of the carriers, in exchange

for an empty vehicle to be used by the first carrier, while the second is completing the through movement. In some instances straight trucks are interchanged or exchanged. Although such movements usually are confined to two lines, it is indicated that in some instances three or more carriers may participate in a through movement, and interchange of equipment. There is not a great deal of evidence respecting interchange, although many of the parties insist that it should be subject to regulation, and the evidence indicates that abuses, particularly unlawful extensions of operations, are possible under the guise of interchange. The evidence deals principally with the impact upon the motor-carrier industry of the roving owner-operators, and to the use made of them. These are sometimes described as "gypsies," or itinerant truckers, and many of them serve any carrier with whom favorable trip-lease arrangements can be made, particularly for the transportation of truckloads of heavy-loading high-revenue freight. The itinerant trucker is not interested in less-than-truckload traffic because of the time consumed in handling it, and the cost of loading and unloading it.

[fol. 47] In addition to the issues embraced in the notice of rule-making instituting this investigation, hereinbefore mentioned, a major issue is the question of our authority under the act to regulate the practices under investigation. Another important issue is whether the hiring of vehicles, with or without drivers, should be under long-term leases. This issue has created the most cleavage among the respondents, and has aroused the most controversy, as a requirement of this character in effect would preclude the use of equipment under trip leases. Other important issues are whether compensation for leased equipment, based on a percentage of the revenue earned with the equipment, should be prohibited, whether possession of the leased vehicle should be vested exclusively in the lessee for the duration of the lease, and sub-leasing prohibited; whether the driver of a leased vehicle should be an employee of the lessee, whether interchange between common carriers should be restricted as to type of equipment or number of carriers, and whether any carrier or group of carriers should be exempted from any rules that may be prescribed.

The Need For Regulation

The leasing practices of the authorized carriers have presented difficult problems from the inception of regulation in 1935, particularly in determining the parties entitled to certificated and permits under the "grandfather" clauses of the act. Early in its administration, in 1937, in the absence of any formal decision, the Bureau issued Administrative Ruling No. 4, which provided, in substance, that an authorized carrier could use a vehicle which it did not own in its operations only if it assumed exclusive possession and control thereof, and if the vehicle was driven by one of its employees. In a few early cases operating authorities were issued applicants whose practices apparently met these requirements, although the administrative ruling was never officially adopted. A leading early decision in which more liberal tests were applied, namely, whether the vehicles of the owner-operators, while used in the carrier's service, were operated under its direction and control, and under its responsibility to the general public as well as to the shipper, is *Dixie Ohio Exp. Co. Common Carrier Application*, 17 M.C.C. 735, subsequently followed in many reports. Thereafter, the courts and this Commission have considered many aspects of motor-carrier operations conducted in vehicles not owned by the carriers and conditions have been determined under which certificates or permits under the "grandfather" clauses of the act could be granted based on such operations. Important decisions are *Thomson* v. *United States*, 321 U. S. 19, and *Allied Van Lines, Inc., Common Carrier Application*, 46 M.C.C. 159. The latter report reviews the holdings in other cases. An important consideration in determining the rights to authority under the "grandfather" clauses, in the case of operations conducted in vehicles owned by others has been the court holding that where a single transportation service was held out, no rights to multiple operations were created. *United States* v. *Rosenblum Truck Line, Inc.*, 315 U.S. 50.

The concept of the extent of control over non-owned vehicles necessary on the part of one seeking to conduct operations as a motor carrier under the "grandfather" clauses of the act has undergone considerable evolution

since Administrative Ruling No. 4 was issued. The requirements of that rule, applied as stated, in some of our [fol. 48] earlier decisions, no longer prevail. In view of a position taken by many parties to this proceeding that the status of owner-operators and others as independent contractors for authorized carriers has attained such stature by court construction that no leasing regulations having the effect of restricting it in any way could be prescribed, we think it important to stress that the prevailing concept of the control over non-owned vehicles necessary on the part of the authorized carriers, was developed in proceedings under the "grandfather" clauses, and in deference to the apparent Congressional intent therein not to grant multiple "grandfather" rights based on a single transportation service. In the *Thomson case, supra*, the railroad was found entitled to a certificate as a common carrier by motor vehicle covering its substituted motor service under the "grandfather" clause, although the vehicles operated in its service were provided by 23 independent truckers, which hauled for others than the railroad, and had filed applications under the "grandfather" clause in respect of such other transportation. They were designated in the contracts with the railroad as "independent contractors". The reasoning of the court, in substance, was that this description was only "contract nomenclature"; that the contractors were mere aids in carrying out a part of the railroad's coordinated motor-rail service, and that only the railroad was entitled to authority under the "grandfather" clause in respect of such service. The Court said:

> Any other conclusion would authorize the wholesale granting of twenty-three "grandfather" permits to the various motor vehicle operators on the basis of this single transportation service offered by the railroad—a result which ascribes to Congress an intent incompatible with its purpose of regulation.

Preceding this conclusion, however, the Court noted that, as to the motor-vehicle operations supplementing its rail service, the railroad was not a mere "freight broker" or forwarder; that the provisions and actual operations of

the contracts with the truckers demonstrated the railroad's rigid control over the movement of the freight, and its retention of full responsibility to the shipper.

Greyvan Lines, Inc., one of the larger carriers of household goods, which operates exclusively through owner-operators, and others opposed to regulations of the type proposed by the examiner, argue that the status of owner-operators as independent contractors is so well settled, that it cannot be altered by regulations which we might prescribe, without violating the constitutional rights of the parties, citing *United States* v. *Silk and Harrison* v. *Greyvan Lines*, 331 U.S. 704. That decision presented a question as to the status of the owner-operators for Greyvan, and certain owner-drivers which performed deliveries within Topeka, Kans., for a retail coal dealer at a uniform price per ton. The owner-operators were held to be independent contractors rather than employees, and hence it was found that Greyvan was not liable for taxes under the Social Security Act. The Court, however, indicated that its determination was made only with respect to the narrow issue before it, and was not to be taken as conclusive upon all situations in which the services of owner-operators might be utilized by authorized carriers. The Court recognized that:

[fol. 49] There are cases * * * where owner-drivers have been held employees in accident suits in tort or under workmen's compensation laws. But we agree with the decisions in Silk and Greyvan that where the arrangements leave the driver-owners so much responsibility for investment and management as here, they must be held to be independent contractors.

The dissenting-in-part opinion of Justice Rutledge pointed out the possibility that both Silk and Greyvan might be held liable in tort under common law tests, and that this would be clearly indicated in the case of Greyvan, in view of the fact the trucks bore its name, in addition to other factors, including a large degree of control exercised over the trucking operations.

Whatever may be the situation with respect to owner-operators under contracts to authorized carriers for definite

periods, as were the owner-operators in the decision just referred to, there seems to be little doubt that where an owner-operator performs transportation for an authorized carrier under a trip lease, under which the obligation and responsibility of the lessee terminates concurrently with the completion of the trip by the lessor owner-operator, the latter is an independent contractor. *Costello* v. *Smith*, 179 Fed. (2d) 715. And, as indicated in the decision just cited, although the lessee carrier may be held responsible to the public for the torts of the owner-operator until the expiration of the lease, thereafter, until the latter is again under lease to another authorized carrier, he is not under the responsibility of any carrier and the public may not be protected by insurance. An investigation conducted by the Bureau of Motor Carriers indicates that such situations are not unusual.

It now seems to be accepted that when an authorized carrier furnishes service in vehicles owned and operated by others, he must control the service to the same extent as if he owned the vehicles, but need control the vehicles only to the extent necessary to be responsible to the shipper, the public, and this Commission for the transportation. When these tests are met, it has been held in numerous proceedings under the "grandfather" clauses that the vehicle operated in the service of the one holding out to the public could be provided by independent contractors, as in the *Thomson case, supra.* Where operating authority has been "farmed out" to non-carriers, however, as in the "provider plan" considered in *Performance of Motor Com. Car. Service by Riss & Co., Inc.*, 48 M.C.C. 327, and the elements of direct control over the movement and handling of freight, and of full responsibility to the shipper, and sole holding-out of service to the public, have been lacking, it has been found that the elements of the common-carrier definition in section 203(a)(14) of the act are not present. As hereinafter seen, the evidence herein indicates that under certain of the leasing practices in effect today these important elements have been greatly weakened.

[fol. 50] The importance of the minimum requirements for carriers subject to the act, which operate through the use of vehicles which they do not own, in respect of a major

aspect of our regulatory power, was pointed out by division 5 on page 360 of its report in the *Riss case, supra,* in the following language:

> In any case of a person claiming to be a motor carrier through the use of the vehicles of others, it is of the utmost importance to regulation that it have and exercise direction and control of the operations and of the persons engaged therein. For otherwise an unworkable situation is created, that is, one, for example, in which neither the Commission nor the person claiming to be the carrier would have any immediate and direct control over safety, hours of service of employees, and other matters pertaining to safe, adequate, and efficient service, and the safe operation of vehicles on the highways, all of which were intended by the act. In other words, as to these important features of motor carrier operation, our regulation thereof, as required by the act, would be negatived to an inoperative degree, as the actual operator would not be subject to our regulations or to the direction and control of the person claiming to be the carrier and subject to our jurisdiction.
>
> The importance which Congress attached to the safety provisions of part II of the act is plainly shown by the fact that while "section 203(b) listed many types of motor carriers which were exempted in general from the act * * * that section significantly applied to all of them the provisions of section 204 as to qualifications, maximum hours of service, safety of operation and equipment." *Levinson* v. *Spector Motor Co.*, 330 U. S. 649, 659.

For a number of years, particularly beginning in 1940, the Bureau has given consideration to the leasing practices of the authorized carriers. Meetings were held with selected typical carriers at various points in 1940. In 1941 a study was begun of the practices, including the methods and amounts of compensation paid lessors, and a statistical report covering these subjects were released in 1943. During the war, directives of the Office of Defense Transportation, and our orders, designed to require the maximum

use of motor-vehicle capacity, and the conservation of fuel and tires, while not authorizing transportation by persons lacking appropriate authority, sanctioned many practices that were permissible only because of the emergency. As a result, leasing among authorized carriers became more prevalent and widespread. After the war, because of the desire of many veterans to engage in business for themselves, the ease with which they could obtain financial aid in buying equipment and the difficulty of entering a regu- [fol. 51] lated industry, leasing practices, particularly the employment of owner-operators, have greatly increased.

After the emergency directives and orders were canceled, the Bureau continued to receive complaints regarding practices of carriers under the guise of leasing, which, in some instances, amounted to unauthorized leases of operating rights. It was ascertained that motor common carriers in the eastern part of the country were augmenting equipment in times of heavy traffic with vehicles of other carriers, exempt haulers, or private carriers, without a lease of any kind. When vehicles of other carriers were used, the other carrier sometimes transported freight on its own billing, and exempt and private carriers frequently transported freight for a number of carriers. Similar conditions were found in the Chicago, Ill., area, except that more carriers there depended on the services of itinerant owner-operators.

In instances where an authorized regular-route carrier permits another to operate over its certificated route under an ostensible vehicle lease, it is difficult at present to determine whether or not the lease is bona fide, or whether an unauthorized and illegal operation is being conducted.

In 1947, the Bureau drafted tentative rules governing the practices under consideration, which were offered to representatives of the carriers for criticisms and suggestions. Although there was general agreement that some action should be taken to correct the abuses, the carriers were unable to agree as to the nature of such action.

The importance of leasing to motor carriers is indicated by a survey made by the Bureau in 1947 through questionnaires to the more than 19,000 authorized carriers

subject to our jurisdiction, a summary of which is shown in the following table:

Type of carrier and total number	Leasing important Percent	Leasing unimportant Percent	Did not lease Percent
General Commodity carriers (5,519)	27.3	9.5	63.2
Tank Truck operators (457)	32.6	14.	53.4
Household goods carriers (2,611)	24.5	6.8	68.7
Heavy haulers (710)	21.3	13.2	65.5
Carriers of other special commodities (6,186)	8.3	6.9	84.8
Not classified (2,038)	50.2	3.7	46.1
Local carriers (1,480)	7.6	8.9	83.5

Of the reporting carriers, 113 local and 3,984 intercity carriers regarding leasing as important, 132 local and 1,363 intercity carriers practiced it, but regarded it as unimportant, and 1,235 local and 12,174 carriers did not practice it in 1947. Leasing was practiced by 5,592 carriers of all types, including 245 local carriers; and 4,047 of the carriers which practiced leasing regarded it as important. This number was over 21 percent of the total number of property carriers. As will be noted from the foregoing table, when the responses were tabulated according to type of carrier, they reflected no important variances from these data except in the case of local carriers, carriers of special com- [fol. 52] modities other than those shown in the table, and unclassified carriers. The percent of those engaging in leasing to the number of carriers, ranged from 25 in the East and Middlewest, to 35 in the South and Southwest, and 36 in central territory.

The carriers which regarded leasing as important in 1947, utilized their leased equipment under 38,785 long-term leases, 104,539 round-trip leases, and 394,896 one-way trip leases. Of the 1,432 carriers using one-way trip leases, 724 carriers leased vehicles on no other basis. The total number of carriers using owner-operated vehicles to any degree was 830; and of this number, 298 carriers used owner-operators exclusively. The total number of one-way

trip leases between carriers and owner-operators, 206,740, was over 52 percent of all such leases.

The indication in the foregoing table that the leasing of equipment is not important to household goods carriers is contradicted by the Household Goods Carriers' Bureau, representing some 2,200 such carriers throughout the country, and the Household Goods Carriers' Conference of A.T.A. These organizations represent approximately 80 percent of the more than 4,000 household goods carriers of the country. As illustrating the importance of leasing to these carriers, in 1947, 46 class-I household goods carriers owned only 30 percent of the vehicles used, leased 50 percent of their vehicles, and purchased 20 percent of their transportation. Of their total revenue mileage, 42 percent was compiled in leased vehicles, and 58 percent in owned vehicles.

The Bureau also conducted an informal investigation through members of the field staff of specific instances of these practices which appeared to be unlawful or undesirable because contrary to the public interest. Some 77 examples of such practices were compiled and introduced in evidence. A summary of the conclusions of the field staff as a result of this investigation is shown in appendix D, but we believe it important to refer to a few of the specific examples of practices discovered. They illustrate, particularly in the case of the regular-route carrier, the difficulty of differentiating between bona fide equipment leases, or bona fide interchange, and unauthorized extensions of operating rights. In one example, a carrier possessing operating authority between Chicago, Ill., and Louisville, Ky., but not beyond the latter point, obtained traffic destined to Chicago from points beyond Louisville and arranged with a carrier having authority to perform the service for what purported to be interchange at Louisville. The carrier serving Chicago, however, performed all the transportation in its vehicles, using shipping documents of the local carrier, and retained all the revenue. It appeared that the local carrier permitted this in order to keep the goodwill of a shipper, and to prevent the Chicago carrier from obtaining operating authority beyond Louisville.

Another carrier solicited and obtained traffic to a point

outside the scope of its authority. It applied for the authority, which was denied. It then made arrangements with another carrier for connecting service, through a theoretical lease of its vehicles beyond the point where its authority ended. At the time of the Bureau's investigation of this movement 60 loads of freight had been transported but the ostensible lessee had no knowledge of any movement. The majority of the shipments were transported over the most direct route and not through a point common to both carriers.

[fol. 53] In another instance, the Bureau discovered that certain local carriers at St. Louis, Mo., having authority to serve the surrounding towns, furnished signed, but otherwise blank lease forms to long-distance carriers having authority to serve St. Louis but not the surrounding towns. After a long-distance carrier had made delivery to one of these towns, it would send a completed lease to a local carrier which previously had signed it, and the latter would issue a freight bill, sending a copy to the ostensible lessor. The local carrier was paid from $3 to $5 for each trip lease.

Many instances were found where contract carriers, having shipments destined to points outside the scope of their operating authorities, arranged for purported leases of their equipment to common carriers. Other than signing shipping papers, furnishing identification placards for the contract-carrier vehicle, and collecting fees for the use of their rights, the common carriers had no connection with the movement.

In one example, an owner-operator leased five pieces of equipment to a common carrier over irregular routes domiciled in Pennsylvania but owning no terminal. The owner-operator performed the solicitation and the transportation. At the same time the same equipment was leased by the owner to a private carrier. The owner-operator also claimed to have an oral lease arrangement with an irregular-route common carrier of general commodities comiciled in West Virginia. When a shipment was tendered to him for transportation, the owner-operator determined under which authority the transportation would be performed, and the shipment was billed on the forms of that

carrier, although none of the lessees had any direction or control over the operation. Only selected and profitable traffic was transported.

The Bureau discovered that certain tank-truck operators used equipment furnished by truck rental companies. The carrier would notify the rental company of shipments to be handled and the equipment was dispatched by the rental company. One piece of equipment and the same driver might transport three or more shipments on the same day for as many carriers.

An owner-operator whose truck was under permanent lease to a motor common carrier, used the vehicle also to perform intrastate transportation for others than the lessee. He occasionally solicited and transported interstate traffic to points the lessee was not authorized to serve, under the billing of the lessee, for which he received 85 percent of the gross revenue. In transporting c.o.d. shipments he failed to collect the charge therefor, or to show the shipment on the freight bill. He had no knowledge of our safety regulations and did not comply with them. He was under the impression that he was leasing the operating rights of a carrier rather than leasing his equipment to the carrier.

In another example three common carriers having authority to provide the service and adequate equipment, solicited the traffic of a shipper which contemplated moving its plant from New Jersey to Acworth, Ga., which is intermediate to Atlanta, Ga., and Chattanooga, Tenn. Another carrier which did not have adequate equipment and lacked authority to serve Acworth, obtained the traffic and provided the service by leasing the equipment of exempt commodity carriers in New York to perform the haul from New Jersey to Atlanta. On arrival of the vehicles in Atlanta, this carrier arranged to sub-lease them to a regular-route carrier from Atlanta to Acworth for $10 per load. The local carrier did not see any of these vehicles at any time.

[fol. 54] Several instances were discovered of household goods movements, where a carrier lacking authority to perform final delivery, booked and in some instances performed the initial transportation of shipments outside the scope of its authority, under purported leases to other carriers. In one instance leases or purported leases were made with a

total of seven carriers prior to the ultimate delivery of the shipment. When the shippers endeavored to collect a damage claim from the initial carrier, it denied liability. In another instance, a household goods carrier, which booked a shipment from Milwaukee, Wis., destined to Phoenix, Ariz., contended that a second carrier was liable to the shipper. The second carrier's authority did not embrace the origin point but it collected the entire charge for the transportation. Ultimate delivery at Phoenix was accomplished by a third carrier which received the shipment at Denver, Colo., and charged its local rate therefrom to Phoenix.

The Bureau found that some household goods carriers having extensive operating rights were in effect granting the use of such rights to numerous ostensible lessors of equipment, making the latter virtually independent operators upon payment of a percentage of the revenue from the shipments transported for the master carriers, for the use of the latter's rights. No specific examples of such practices among household goods carriers were described by the Bureau, and the evidence of the principal carriers having nation-wide operating authorities, hereinafter considered, is to the effect that such practices do not prevail to any serious extent.

The Bureau discovered several instances where carriers lacking authority to serve specific destinations would arrange with connecting carriers to permit transportation to such destinations over the connecting carriers' routes, without transfer of lading, under purported trip leases of equipment, although the connecting carriers had no representatives at the points where the routes connected. Under such arrangements the lessees did not check to ascertain whether the equipment was maintained in compliance with our safety regulations, and whether the driver was in compliance with our hours of service. The Bureau found that control over the drivers by carriers utilizing the service of itinerant owner-operators or haulers of exempt commodities was very lax. In one instance a driver of such vehicle had an accident, causing personal injury. He failed to give full information to the lessee, and the latter was not advised respecting the occurrence until five months thereafter.

The experiences of many carriers, as set forth in the record herein, also contain many examples of unlawful or undesirable practices attendant upon present leasing arrangements. A regular-route carrier of Milwaukee, which operates between that point and Chicago, discontinued the employment of owner-operators under trip leases because they failed to return its identifying placards. It also was unable to determine whether they complied with the hours-of-service regulations, and, as many did not carry certificates of physical examination, it could not always be certain as to their fitness to drive. Where an operator was used for only one trip it was not practicable to have the carrier's own physician conduct the examination. In one instance this carrier hired an owner-operator to transport a shipment from Chicago to Milwaukee, upon the operator's assurance that he had had the prescribed hours of rest. While en route he fell asleep while driving and the equipment was [fol. 55] turned over. Upon a further check, the carrier ascertained that the owner-operator had previously driven 14 hours continuously for another carrier. His daily log had been inspected but had been falsified with respect to his previous hours of service.

An official of another regular-route carrier domiciled in Indianapolis, Ind., and serving that point, Chicago, Cincinnati, Ohio, and other points in central territory, stated that it spends at least a week checking the references and operating experience of an applicant for a driver's position, and has such applicant examined by its own physician, but devotes only a few minutes to the compiling of similar information respecting owner-operators. In its experience the check made of owner-operator equipment, being necessarily brief where the operator is engaged for a single trip, is inadequate. This carrier hires owner-operators under trip lease only for the transportation of freight at reduced rates which have been established by carriers operating almost exclusively with owner-operator equipment.

The owner of a tractor rented to an equipment-leasing company, and hauling a trailer bearing the name of a shipper, both vehicles being under ostensible lease or sub-lease to the shipper, solicited a return shipment from the carrier just referred to, after unloading at the carrier's dock, al-

though the owner-driver claimed to be in the employ of the shipper, and requested that payment for his service be made to the shipper.

The manager of two associations of common carriers operating in the Chicago area, and between Chicago and Milwaukee, testified respecting unauthorized operations and other violations of the act occurring in that territory. In one example an owner-operator for a carrier having extensive rights over the eastern part of the United States transported a load of steel from Pittsburgh, Pa., to Chicago, the terminus of the carrier's authority, destined to Milwaukee. The driver's instructions were to interchange the shipment at Chicago but instead he transported it to Milwaukee and on his return to Chicago endeavored to enter into a trip lease with a carrier having operating rights between the two cities, covering the unauthorized transportation.

According to the witness, many carriers in the Chicago area utilize principally owner-operators because several hundred are available at that point. These carriers are interested only in truckload traffic, and have been responsible for numerous reduced rates, tending to cause a deterioration in the rate structure in central territory. A similar claim is advanced by carriers domiciled at St. Louis. Traffic inbound to the latter point preponderates, and much of it is transported by owner-operators, whereas outbound traffic is relatively light; creating a situation where the owner-operators will accept a return load for enough revenue to pay their out-of-pocket expenses.

The Oil-Field Haulers Association, representing about 300 carriers engaged in transporting oil-field equipment and heavy machinery, conducted an investigation of the leasing practices of this type of carrier which corroborated evidence developed by the Bureau. In one instance discovered by the Association an owner-operator of a leased truck, upon reaching destination, offered an association carrier his equipment for a return load, provided the carrier would pay him in cash and not advise the lessee of the transaction.

[fol. 56] The experience of two of the largest contract carriers operating in midwestern territory in the employment of owner-operators for single trips, has demonstrated

that careful examination of the equipment and of the operator is impracticable because of the administrative detail involved. These carriers spend considerable time in the examination of applicants for driver positions or owner-operators employed on long-term leases. In some instances where they have required a physical examination of owner-operator applicants, these have been found physically unfit, and in other instances the owner-operators were not interested in employment when they were advised that their equipment must be inspected and that they must take physical examinations. For competitive reasons these carriers utilize owner-operators on trip leases to transport about 10 percent of their traffic. They have lost the services of some of their permanent owner-operators, apparently because operations under trip lease were more profitable.

Carriers which specialize in stringing main trunk pipelines testified to unfair competition growing out of the practices of certain carriers in leasing vehicles with drivers to the contractors who purportedly operate as private carriers in order to beat down the charges for the service. In one instance, in which certain pipeline stringers bid on a job, the pipeline company leased the equipment of another carrier which lacked authority, and performed the service itself at lower charges than those quoted by the carriers having the authority.

The testimony of both the employing carriers and owner-operators indicates that in checking equipment for violations of our regulations it is difficult to ascertain whether the equipment is owned by a carrier or operated under lease because of the prevailing practice in some territories of assigning title to owner-operator equipment to the lessee carrier, particularly when owner-operators are engaged under long-term leases. The assignment of title in such cases is made with the understanding that upon the termination of the lease the title is to be re-assigned to the owner-operator.

Owner-operator employed under trip leases, after the completion of a one-way haul are "on their own", as an executive of a large carrier in central territory expressed it, and the lessee in most instances makes no effort to obtain a return load for the operator. Most of the carriers,

including those which are substantial users of owner-operator equipment and oppose restrictions on trip-leasing, concede that upon the completion of a trip they assume no responsibility for the owner-operator, and, as some of the owner-operators either do not carry public liability and property damage insurance or are unable to obtain it, protection for the public may be lacking, as was pointed out in *Costello* v. *Smith, supra.* In such instances the opportunity is presented the owner-operator to engage in unlawful transportation, if he can obtain a shipment. It appears to be a not uncommon practice of haulers of exempt commodities to obtain traffic through direct solicitation of a shipper, and then to contact some authorized carrier having appropriate authority who will pay the highest compensation, and validate the transaction through a trip lease. Transportation under these circumstances by the owner-operator is, of course, unlawful, but the Bureau has experienced difficulty in obtaining evidence respecting such operations. Protection of the public through insurance is reduced, because certain carriers require owner-operators to bear a portion of the public liability and property damage [fol. 57] insurance, and in some instances to assume part of the responsibility for cargo insurance and pay a portion of each loss and damage claim.

The testimony of owner-operators in this proceeding indicates that numerous carriers which utilize the service of such operators either sanction or require many practices that are incompatible with the duties and responsibilities of the carriers. According to an official of an organization representing some 1,500 owner-operators in 21 States, principally in the eastern part of the country, their lessee carriers generally require the owner-operators to deposit $100 per vehicle while in the employ of the carrier. The witness operated under an agreement whereby he paid the first $50 of each loss or damage claim. He understood that this was a uniform practice in the territory. In addition, the carriers which employ members of his organization withheld substantial amounts of compensation owing to the owner-operators. The owner-operators were also required to assign the titles to leased vehicles to the carriers while in the service of the latter.

The falsification of drivers' logs by owner-operators in order to cover up violations of our safety regulations appears not to be uncommon. This is reflected in the testimony of some 10 witnesses who were either owner-operators or former owner-operators, presented by the Teamsters Union. About 200,000 of the 1,000,000 members of this union drive vehicles in operations that are subject to our jurisdiction. All of these witnesses had driven for periods in excess of our hours-of-service requirements, ranging from 16 to 76 hours without adequate rest. They almost continuously overload their equipment, deferred necessary repairs because of lack of funds, and drove under extremely bad conditions. In addition, they practiced such economies as letting the trucks coast downhill in neutral gear in order to save fuel.

These owner-operators never disclosed violations of the hours of service, but instead falsified their daily logs so as to show only the permissible driving periods, and some of them were cautioned by representatives of the carriers by whom they were employed not to show too many hours spent driving. In one case overtime spent in truck maintenance and unloading was marked in the log as time off duty. This particular owner-operator worked for four different carriers, but only one ever checked his certificate of physical examination and none of the carriers ever inspected his equipment. He carried no public liability insurance because he could not afford it. The witness testified to having driven 29 hours without suitable rest on one occasion.

Others of these witnesses corroborated the testimony regarding the lack of inspection of equipment or of certificates of physical examination by the carriers which employed them. The carrier for whom one of the witnesses worked never inspected the witness' equipment or checked it for flares, fuses, fire extinguishers, and other safety equipment. The owner-operator twice hauled explosives without having his equipment properly marked as being used for this purpose, as required by our regulations.

One of the witnesses who had been a truck driver for 25 years testified regarding his experiences as an itinerant owner-operator of a tractor-trailer for various carriers.

His testimony respecting the failure of carriers to inspect his equipment, logs, or certificate of physical fitness, and the carriers' lack of control over his operations was similar [fol. 58] to that of other witnesses. He continuously overloaded the equipment and was advised by his employing carriers as to the location of State weighing stations in order that he could avoid them. He produced copies of trip leases entered into with seven different authorized carriers. On one occasion at a so-called "truck-stop" in New Jersey, through an individual described as a broker, he obtained a load of freight for a shipper destined to Baton Rouge, La., and transported it to that point entirely on his own initiative and in the complete absence of any carrier's responsibility. He frequently gave a fee or present to dispatchers or terminal managers in order to obtain a profitable load of freight.

Most of the witnesses testifying had owned and driven power units only, for which they were compensated generally on a weight, mileage, or ton-mileage basis. All of them testified to earnings so low as to preclude proper maintenance of the equipment, and in practically all instances the equipment had been repossessed by a mortgagee or bank. All testified to their inability to properly service and maintain their equipment.

The household goods carriers in this proceeding, having nation-wide authority, oppose restrictions on leasing of equipment and contend that violations of law or our regulations in their leasing practices are negligible. Nevertheless, a witness on behalf of one such carrier reported three instances in which owner-operators of equipment under lease to it had performed unauthorized transportation. In two other instances, hauling agents for another nation-wide household goods carrier had issued bills of lading in the carrier's name and participated in the revenue from shipments transported by them without reporting the shipments or remitting therefor. The carrier subsequently ascertained that one of these agents twice had been convicted for performing unauthorized transportation in interstate commerce, and had been permanently enjoined from engaging in such operations.

The owner-operators represented in the proceeding and most of the carriers which utilize their services, particu-

larly under trip leases, generally are in favor of the compensation for the equipment being based on a percentage of the gross revenue derived from the transportation. The preference is based on the alleged simplicity of the method, and the fact that it has been in vogue almost since the beginning of intercity motor transportation. We are convinced from the record, however, that the principal reason this method of compensation is used is because the owner-operator quite naturally desires to earn as much as possible with his equipment. It is contended by carriers opposed to trip leasing, and not contradicted on the record, that the owner-operators prefer to transport truckloads of heavy-loading traffic. Those in favor of regulating the practices charge that carriers operating principally through owner-operators endeavor to avoid less-than-truckload traffic, leaving it to be transported by carriers which own the major part of their equipment. It is further claimed that the carriers which concentrate on truckload traffic and use owner-operators for its transportation, are able to maintain rates which are considered less than compensatory for other carriers. When tendered shipments at rates considered non-compensatory, many of these other carriers engage owner-operators under trip-leases to perform the transportation.

[fol. 59] It is clear that the use of owner-operator equipment in any important degree would have a tendency to distort a carrier's operating ratio, in that operating expenses such as maintenance, fuel, and others, are avoided. In making cost studies, and in general revenue cases, in considering operating ratios of a group of motor carriers, the data of carriers which operate principally with leased equipment necessarily are excluded. The fact that wages generally are not segregated in the compensation paid owner-operators makes impossible a correct determination of the labor costs of such carriers.

It is argued on behalf of carriers which are important users of owner-operator equipment that the owner-operator generally takes better care of his equipment than does the company driver. This is disputed by many owner-operator witnesses, as previously indicated. It would appear difficult for an individual to maintain a single piece of equip-

ment, or a tractor-trailer unit, more economically than a carrier, who is able to spread the maintenance cost over a great number of such units. A large carrier of general commodities located at New Haven, Conn., and operating between Boston, Mass., and Philadelphia, Pa., one of the most vigorous opponents of trip-leasing, contends that it is impossible for owner-operator equipment to be properly maintained. This carrier, which owns approximately 425 vehicles, operates a completely equipped maintenance shop, staffed by 80 employees, and capable of providing almost any truck repair or rebuilding operation, and also has mechanics stationed at all of its 10 terminals for making emergency repairs. The carrier also has a safety department and three employees who patrol its routes in order to check on its equipment and render assistance, when necessary, to the drivers. Its line-haul vehicles are equipped with tachographs, and violations of speed limits thereon reported are turned over to its personnel department for appropriate disciplining of the driver. Accident and sickness benefits and group insurances are provided for all its employees. It is the position of this carrier that without the kind of maintenance and supervision which it provides, a safe motor-carrier operation cannot be conducted. It is one of the carriers claiming to have lost truckload traffic to carriers which conduct operations principally with owner-operators.

The Director of the Bureau expressed the opinion that protection of the public is much better by carriers which own their vehicles than by those which rent all their equipment, and this would appear to be true in the case of carriers which depend entirely upon providing transportation through trip-leasing of owner-operator vehicles. Where carriers own and maintain their own equipment there would appear to be less likelihood of failure to provide adequate insurance coverage for the protection of the public. As to whether owned or leased equipment has the best record for safe operation, however, there is considerable dispute. The Bureau made road checks of both for-hire and private-carrier vehicles for violations of our regulations, particularly the safety regulations, for the six months ending September 15, 1948. The violations were segregated between

owned and leased vehicles, and in the same five regions of the country that were used in ascertaining the importance of leasing. In southern territory the percent of owned vehicles in violation was 94, compared with 93.6 percent of leased vehicles. In all other regions, however, a greater percent of leased vehicles was in violation, but, except in the middle west, the differences in percents are not significant and the number of leased vehicles checked was much less than the number of owned vehicles. For example, [fol. 60] in the Pacific and Intermountain States, where 85 percent of leased vehicles were in violation, as compared with 79.8 percent of owned vehicles, 330 leased vehicles were checked as compared with 1,217 owned vehicles. In general, the percent of vehicles in violation of our requirements respecting the keeping of drivers' logs, and maximum permissive daily or weekly driving hours, was somewhat greater in the case of leased vehicles in all parts of the country except the Pacific Coast and Intermountain territory, where the difference was so slight as not to be significant. It was impossible to make proper checks as to these violations where the drivers' logs were not kept or were improperly kept. As previously indicated herein, many owner-operators of vehicles under lease to carriers, when checked on the highway for compliance with our regulations, do not explain that the vehicle is under lease to the carrier under whose authority it is being operated.

In the case of hauls by owner-operators under trip lease between terminals of the lessee carrier, a check on the safety compliance of the lessor while the lease is effective is possible, but this is not true in the case of owner-operators performing service for irregular-route carriers, when the haul is completed at a point that is not a terminal. It should also be noted that in the case of the private carriers checked by the Bureau the percent of owned vehicles showing violations of the requirements respecting drivers' logs was much greater than the percent of leased vehicles in violation.

The respondents that utilize the equipment of owner-operators deny that accidents are any more numerous in the case of such equipment than where owned equipment is operated. Four large motor common carriers of general